

**CAT - Convention against Torture and other Cruel Inhuman or
Degrading Treatment or Punishment
77th Session (10 July 2023 – 28 July 2023)**

NGO-repot of InterAction Switzerland

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InterAction Switzerland is a non-governmental organization (article 60ff. Swiss Civil Code) for and by intersex women, men and non-binary intersex people of all ages and from all linguistic parts of the country, founded on 26 October 2017. We are committed to political advocacy, providing education in schools and to medical professionals, higher education institutions and medical students, public awareness-raising and monthly community meetings.

InterAction Switzerland is part of the LGBTIQ+ family and other human-rights-networks and child protection organizations.

I. Meaning of Intersex and executive summary

1 **Intersex is an umbrella term**, a spectrum to describe innate variations of sex characteristics (**VSC**) regarding reproductive organs / internal or external sex / genital characteristics, hormonal structure and/or levels and/or chromosomal patterns that are different from the definition of male or female. Intersex children are either boys or girls. **Intersex** should be distinguished from **gender** identity (e.g. non-binary gender identity, men/boys or women/girls).ⁱ The UN estimates that at least 1.7% of the population have been born with intersex traits.ⁱⁱ Like any human being, intersex people may later in life have a non-binary gender-identity or have any kind of sexual orientation (lesbian, gay, bisexual or heterosexual etc.). People with a VSC are therefore as diverse as the rest of the Swiss population (endosex people).

2 Mostly, medical interventions are not proportionate but aim to fit the child into a socio-medical norm. We understand **modifications of sex characteristics** as all forms of modifying internal or external sex / genital characteristics and as harmful practices and inhuman or degrading treatment.ⁱⁱⁱ

Forms of modifying internal or external sex / genital characteristics:

genital surgeries, gonadectomies, partial clitoris amputations, dilation of a surgically created vagina on girls, plastic surgeries on the vulva, vagina, plastic surgeries of the scrotum, testicles, and penis, including ‘corrections’ of hypospadias, and other irreversible interventions such as sterilizing procedures, ovariectomies, hysterectomies, involving medical treatment that terminates or permanently reduces reproductive autonomy – *unless such interventions are lifesaving and of crucial importance for the health of the child.*^{iv}

Executive Summary

3 This report is submitted by InterAction Switzerland. We may also refer to the joint NGO submission of the «Plateforme des ONG suisses pour les droits humains» (coordination by ACAT-Suisse) with which we are working in this session. **Key facts:**

- Lack of legal security and lack of implementation of the Swiss Constitution.¹,
- lack of access to justice and compensation,
- shift in responsibility from the state to the medical profession and shift in responsibility by the medical profession to parents of intersex children (blackboxing of intersex),
- lack of integration of peer-groups into medical psychosocial care,
- absence of a strategy or action plan to promote awareness, health and rights,
- lack of respect of the rights of intersex children and adults to prevent acts of torture (art. 2 and CAT/C/GC/2, paras.18, 20) or other forms of cruel, inhuman or degrading treatment (art. 16).

¹ Hereafter Fed. Cst. (RS 101 : Compilation (<https://www.fedlex.admin.ch/eli/cc/1999/404/fr>)).

II. Introduction and key facts

Intersex Genital Mutilation and Female Genital Mutilation as Harmful Practices

Both intersex girls and boys and girls who experience female genital mutilation “are denied basic human rights including freedom from violence, freedom from gender and sex-based discrimination, the right to bodily integrity and the right to the highest attainable standard of health.”^v Jones continues (note v, p.403): “As with FGM, IGM practices carry a large number of known risks of physical and psychological harm. As with FGM, these include loss or impairment of sexual sensation, poorer sexual function, painful scarring, painful intercourse, incontinence, problems with passing urine, increased sexual anxieties, [...] less sexual activity, lifelong trauma and mental suffering.” Experiences are different (relating to the variation), but include elevated rates of self-harming behaviour, suicidal tendencies comparable to those who have experienced child sexual abuse, loss of reproductive capabilities, lifelong need for Hormone Replacement Therapy.

Resulting health problems, lack of healthcare, inadequate support, and irreversible consequences, **are a result of harmful practices** to emphasize the *surgically* assigned sex (e.g. CEDAW/C/DEU/CO/7-8, para.23(e), CEDAW/C/CHE/CO/4-5, para.24(c), CRC/C/CHE/CO/2-4, para.42(b)), CRC/C/CHE/CO/5-6, para.29(c), CAT/C/CHE/CO/7, para.20).

Medical professionals and the Swiss Government do not explicitly act against such practices.^{vi} However, modifying sex characteristics is still practiced in Switzerland: all these interventions of ‘unspecified malformation of the female/male genitalia’ remain constant or even increase^{vii} and must be understood as **harmful practices**^{viii}. These practices

- “constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions”;
- “constitute discrimination against women or children and are harmful” in various regards;
- they “are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms [...] on the basis of sex, gender, age and other intersecting factors”;
- “are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent”^{ix}.

Shift in responsibility

Furthermore, there is a “shift in responsibility from the state to the medical profession.[...] Similar shifts in responsibility are also utilised by the medical profession to deflect responsibility from themselves and to place it onto [...] parents of intersex embodied children. This ‘funneling’ of responsibility away from institutions and towards individuals enables the continuation of non-therapeutic medical interventions on children and prevents collective action against them.”^x This leads to the “blackboxing” of intersex that maintains the schism between human rights and non-therapeutic, irreversible non-consented bodily interventions on children.

III. Implementation of international children’s rights and legal framework

8 In several concluding observations of **UN treaty bodies**, Switzerland had been recommended to stop or prohibit non-voluntary, deferrable, irreversible modifications of sex characteristics of intersex children.^{xi} On the **regional level**, ECRI required the same in 2019.^{xii}

9 On the **national level**, the NCE recommended already twice to prohibit sex modifying procedures of intersex children lacking capacity.^{xiii} The NCE concluded (p.13): “An irreversible sex assignment intervention involving harmful physical and psychological consequences cannot be justified on the grounds that the family, school or social environment has difficulty in accepting the child’s natural physical characteristics. [...] In addition, there is no guarantee that the intended purpose (integration) will be achieved”.

10 Any restriction on fundamental rights must have a legal basis and must be justified as being in the public interest and be proportionate; above all, the essence of fundamental rights is inviolable (article 36(4) Fed.Cst.).^{xiv} In addition to constitutional law, civil law is of particular importance, especially the protection of children’s rights (articles 19c and 296ff. Swiss Civil Code (RS 210)². These rights are not guaranteed yet in Switzerland, either for boys and girls or for adults with a VSC.

11 Regarding female genital mutilation, a new provision (article 124) was added to the Swiss **Criminal Code** (RS 311.0)³ in 2012 to put an end to the lack of legal security. No such provision in the Criminal Code, *hence* no legal security, exists against harmful and inhuman medical treatment of intersex children (e.g., arts. 2, 3, 4, 12, 19, 24(3), 37a CRC / articles 2, 5, 10-13, 15 CEDAW / arts. 2, 16 CAT).

² Hereafter Civil Code.

³ Hereafter Criminal Code.

IV. Recommendations for the State under Review

The following recommendations aim to promote the human rights situation of intersex people and especially children in Switzerland. ¹²

(1) EXPLICITLY PROHIBIT IN THE CRIMINAL CODE ANY PRACTICE THAT MODIFIES CHILDREN'S SEX CHARACTERISTICS WITHOUT MEDICAL REASONS AND FULL AND INFORMED CONSENT UNLESS THE INTERVENTION IS LIFESAVING OR OF CRUCIAL IMPORTANCE FOR THE CHILD'S HEALTH.

The legal situation is essentially the same as it was before the ban on female genital mutilation in article 124 Criminal Code. Explicit legislation to protect the bodily integrity and self-determination of intersex children doesn't exist (CAT/C/CHE/CO/7, para.20(a)).⁴ The recommendations from the Swiss Ethics Commission have not been implemented by the Swiss Government (margin9). The State party report (CAT/C/CHE/CO/7)⁵ does not take this into account and does not fully address question 27 of CAT/C/CHE/QPR/8.⁶ No one should be subjected during infancy or childhood to *non-urgent medical or surgical procedures*, as the CAT mentioned in his Concluding observations. This is not guaranteed yet in Switzerland. Regarding the remark of Switzerland in SPR/8, para.166: Recent laws in European countries foresee legally binding prohibitions or regulations for national courts.^{xv} The mentioned Central Ethics Committee of the SAMS is not a governmental organization, but a purely private-law organization; its recommendations are not legally binding for state courts. Also, it must be mentioned that the statement in SPR/8, para.166 pursues a purely medical perspective. ¹³

Motion 22.3355 was submitted to the Council of States on 18 March 2022. An explicit prohibition in the Criminal Code of modifications of sex characteristics of children not capable of judgement is crucial and indispensable to ensure legal security. The Swiss government should therefore support this legislative motion.

COB 20(a) / QPR/8, 27

⁴ Hereafter COB.

⁵ Hereafter SPR/6 (State party report).

⁶ Hereafter QPR/6.

(2) PROVIDE families WITH INTERSEX CHILDREN AND INTERSEX PEOPLE WITH ADEQUATE COUNSELLING, EMPOWERING SUPPORT AND PEER-TO-PEER COUNSELLING.

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There is currently little evidence that medical practice has changed. Supporting families in parenting intersex children has not been developed or supported by government healthcare systems.^{xvi} Moreover, learning from empowerment and peer-to-peer concepts and counselling, such as initially developed by patient groups, the exchange between lived-experience experts, relatives and experts should be promoted to enhance mutual understanding of the different perspectives.^{xvii} Apart from what we offer (peer-groups), in Switzerland no such *independent* counselling services exist. The note in SPR/8, para.166, that interdisciplinary (multidisciplinary) teams would exist in Switzerland, is not correct.

COB 20(b)

**(3) A) PROVIDE ADEQUATE COMPENSATION/REDRESS TO INTERSEX PEOPLE AFFECTED BY SURGICAL OR OTHER MEDICAL TREATMENT WITHOUT THEIR FREE/FULL INFORMED CONSENT AND ESTABLISH SPECIFIC FUNDS FOR COMPENSATION.
B) EXTEND THE RETENTION PERIOD FOR MEDICAL RECORDS TO 40 YEARS, BEGINNING WITH THE AGE OF MATURITY, AND ESTABLISH A FEDERAL CENTRAL REGISTER.**

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Intersex people in Switzerland deserve compensation for the human rights violations and degrading treatment they have suffered and are suffering from. It should be noted that access to legal remedies is rendered impossible, as the retention period for medical records has often expired by the time intersex children reach adulthood. Funds for reparations should be established. A federal central register should be introduced for all genital modifying operations or other treatments that may result in a modification of internal or external sex characteristics.

COB 20(c)

(4) COLLECT SYSTEMATIC, DISAGGREGATED (I.A. AGE, MEDICAL REASONING) DATA REGARDING THE NUMBERS OF IRREVERSIBLE SEX-MODIFYING PRACTICES ON CHILDREN WITH A VSC.

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Detailed statistics on medical practices in relation to medical treatments of intersex girls and boys are not available. However, 141 intersex infants aged 0-2 years received medical treatments in a hospital in Switzerland between 2010 and 2017. According to data from the Children's Hospital in Zurich (Jan 2022), 85-135 genital operations are performed each year on children with a VSC.^{xviii} Statistics on medical practices have to be independent and include all above-mentioned interventions (margin2).

In addition to these 4 recommendations, we propose to the Committee to recommend to Switzerland the following:

(5) ADOPT A NATIONAL ACTION PLAN TO PREVENT ALL FORMS OF INHUMAN TREATMENT OF INTERSEX CHILDREN/ADULTS. A NATIONAL ACTION PLAN SHOULD INCLUDE E.G.: AWARENESS-RAISING MEASURES, TRAINING OF MEDICAL STUDENTS AND PUPILS IN MEDICAL CURRICULA, SCHOOLBOOKS, LACK OF HEALTHCARE, INTERSEX IN HEALTH SURVEYS AND REGISTERS, GENDER AND SEX STEREOTYPES.

Training

- About one third of respondents (in FRA 2020) say that a medical determination was made, but that they did not get a specific diagnosis or clear information.^{xix}
- Stigmatization and isolation hinder the development of young intersex persons.
- Development of a healthy self-esteem is extremely difficult.

Young intersex children should be informed at school, by medical professionals or peer-groups, that intersex variations are healthy variations of the human body. Training of young medical students is crucial.

Health

Switzerland (SPR/8) does not address specific health matters of intersex women and men. Most forms of modifying sex characteristics are violations of the human rights of healthy children and may be considered as inhuman and degrading treatment. Long-term health problems, lack of healthcare and inadequate support result from these interventions. Switzerland (SPR/8, para.165) mentions, that "the current framework ensures that the best interests of the child take precedence over all medical interventions and treatments". However, in making this statement, the Federal Council refers only to medical experts and not to research findings of social science experts. Therefore, the note of the Federal Council in his SPR/8, para.164 "that current practice respects the rights of intersex persons" does not reflect an objective evaluation.

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- i CEDAW/C/BGR/CO/8, para.34(e), where the Committee recommends that intersex *women* are not subjected to surgery or treatment without their free, informed and prior consent.
- About 7-10% of intersex people have a **non-binary gender identity**; Ramesh Babu/Utsav Shah, Gender identity “disorder” (GID) [sic!] in adolescents and adults with differences of sex development (DSD): A systematic review and meta-analysis, *Journal of Pediatric Urology* (17/1) 2021, 39-47: mean: 15%; however, men with hypospadias (one of the most common variations) are not included in surveys; European Union, Agency for Fundamental Rights (FRA), A long way to go for LGBTI equality, Luxembourg 2020: 1’519 intersex persons were interviewed, only 7% identified as non-binary (p.60).
- see: CEDAW/C/GC/28, nos.5, 22; Michelle Cottier, Article 5 CEDEF, 131-162, in: CEDEF - La Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes et son Protocole facultatif. Commentaire, Maya Hertig Randall, Michel Hottelier/Karine Lempen (éds.), Genève 2019. no.22f. and Karine Lempen, Repenser la discrimination «à raison du sexe» au sens de la loi fédérale sur l'égalité à la lumière de la CEDEF, *Revue de droit suisse* 2021(vol.II), 191-275, 208f.: “la convention [...] vise [...] une modification des rôles sociaux”, also 229f.
- ii Melanie Blackless/et al., How sexually dimorphic are we? Review and synthesis, *American Journal of Human Biology* 2000(12/2), 151-66.
- iii Already: United Nations, Human Rights Council, Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), 1 February 2013; WHO, Sexual health, human rights and the law, Geneva 2015 (<https://www.who.int/publications/i/item/9789241564984>, visited: June 2023); United Nations, Human Rights Council, Tlaleng Mofokeng, Violence and its impact on the right to health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/50/28), 2022.
- iv Melinda Jones, Intersex Genital Mutilation – A Western Version of FGM, *International Journal of Children’s Rights* 2017(25), 396-411, 399f.
- v Ibid., 397; also Nancy Ehrenreich/Mark Barr, Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of “Cultural Practices”, *Harvard Civil Rights-Civil Liberties Law Review* 2005(40/1), 71-140; Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): a Consensus Statement, *Nature Reviews/Endocrinology* 2018(14), 415-429, 416.
- vi See our [media release of 23 of July 2019](#) : Altérations et mutilations des caractéristiques sexuelles pratiquées sur des enfants intersexués et données statistiques; the development of the number of cases until 2019 did not change: Florence Brenzikofer, *Heure des questions in the Swiss parliament*, [20.6005](#), 14.12.2020; see endnote vii for Germany, the situation is probably the same in Switzerland.
- vii Josch Hoenes/et al., Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter - Follow Up-Studie, Bochum 2019, 2: The study shows “that nothing has changed – notwithstanding discourse, reports and opinions. Surgeries continue to be carried out, no matter how many round tables and hearings there may be.”
- viii CEDAW and CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 (CEDAW/C/GC/31 - CRC/C/GC/18).
- ix Ibid., para.16(a)-(d).
- x Fae Garland/et al., Intersex Activism, Medical Power/Knowledge and the Scalar Limitations of the United Nations, *Human Rights Law Review* 2022(22), 1–22, 12.
- xi 2015: [CAT/C/CHE/CO/7](#), para.20; [CRC/C/CHE/CO/2-4](#), paras.24-25, 43(b);
2016: [CEDAW/C/CHE/CO/4-5](#), para.25(c-e);
2017: [CCPR/C/CHE/CO/4](#), para.25;
2021: [CRC/C/CHE/CO/5-6](#), para.29(b): Prohibit ... unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent;
2022: [CEDAW/C/CHE/CO/6](#), para 56(d): Specifically criminalize surgical interventions on the genitalia of intersex children unless medically necessary;
2023: HRC, Report of the Working Group on the Universal Periodic Review, 4th review Switzerland, Draft report (A/HRC/53/12), 31 March 2023) : paras.39.291 ss.: Mexico, Netherlands, Iceland, Malta recommend explicit prohibition of sex modification (3 other recommendations.
- xii ECRI, Report on Switzerland (sixth monitoring cycle), on 10 December 2019 (Recommendation 5 "effectively protected"/ prohibit “sex-“normalising” surgery”).

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- xiii National Advisory Commission on Biomedical Ethics, NCE
<https://www.nek-cne.admin.ch/en/publications/opinions>:
- On the management of differences of sex development, para.20/2012, 13 and rec. 3 and 4;
 - Officially recorded gender. Ethical considerations on the management of the recording of gender in the civil register, para.36/2020, 29.
- See also: Katrina Roen, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice, *The Journal of Sex Research*, 2019(56/4-5), 511-528, 526.
- xiv On the regional level see e.g.: European Parliament resolution of 14 February 2019 on the rights of intersex people (2018/2878(RSP)); Promoting the human rights of and eliminating discrimination against intersex people, Resolution 2191 (2017); European Union (FRA), 2020 (endnote i), no 2.4: 62% of 1'519 intersex respondents were not asked for their or their parents' consent before undergoing surgical intervention to modify their sex characteristics.
- xv Malta: Gender Identity, Gender Expression and Sex Characteristics Act, art. 14; Portugal: Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa, Lei n.º 38/2018, art. 4, 5; Germany: Bürgerliches Gesetzbuch (BGB), § 1631e Behandlung von Kindern mit Varianten der Geschlechtsentwicklung; Iceland: Act on Gender Autonomy No 80 /2019, amended by Act No. 159/2019, No. 152/2020 and No. 154/2020; Greece: Law 4958/2022.
- xvi Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): a Consensus Statement, *Nature Reviews/Endocrinology* 2018(14), 415-429, 416.
- xvii Susanne Krege/et al., Variations of sex development: The first German interdisciplinary consensus paper, *Journal of Pediatric Urology* 2019(15), 114-123, 115f.
- xviii See [media release of 23 of July 2019](#) (French): 4ème rapport périodique de la Suisse sur la mise en œuvre de la Convention internationale relative aux droits économiques, sociaux et culturels; Ulrike Klöppel, Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter, Zentrum für transdisziplinäre Geschlechterstudien, Bulletin Texte 42, Berlin 2016; Josch Hoenes/Eugen Januschke/Ulrike Klöppel, Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter - Follow Up-Studie, Bochum 2019, 2: Surgeries continue to be carried out. - **Voir Canton de Zurich RRB-2022-0125** : selon les données de l'Hôpital pour enfants de Zurich, 85 à 135 opérations génitales sont effectuées chaque année sur des enfants présentant des "variantes du développement sexuel": [Postulat du 15.11.2021](#), [Extrait du procès-verbal du Conseil d'Etat du canton de Zurich du 26.01.2022](#), [KR-Nr. 394/2021](#) (visited June 2022).
- xix European Union (FRA), 2020 (endnote i), para.2.4.3; also: Tiffany Jones, The needs of students with intersex variations, *Sex Education* 2016(16/6), 602-618, 616.